

Revision: HCFA-PM-95-4 (HSQB)
JUNE 1995

State/Territory: STATE OF HAWAII

Citation 4.35 **Enforcement of Compliance for Nursing Facilities**

42 CFR
§488.402(f)

(a) **Notification of Enforcement Remedies**

When taking an enforcement action against a non-State operated NF, the State provides notification in accordance with 42 CFR 488.402(f).

(i) **The notice (except for civil money penalties and State monitoring) Specifies the:**

- (1) nature of noncompliance,
- (2) which remedy is imposed,
- (3) effective date of the remedy, and
- (4) right to appeal the determination leading to the remedy.

42 CFR
§488.434(a)(2)

(ii) **The notice for civil money penalties is in writing and contains the information specified in 42 CFR 488.434(a)(2).**

42 CFR
§488.402(f)(2), (3), & (4)

(iii) **Except for civil money penalties and State monitoring, notice is given at least 2 calendar days before the effective date of the enforcement remedy for immediate jeopardy situations and at least 15 calendar days before the effective date of the enforcement remedy when immediate jeopardy does not exist.**

42 CFR
§488.456(c) & (d)

(iv) **Notification of termination is given to the facility and to the public at least 2 calendar days before the remedy's effective date if the noncompliance constitutes immediate jeopardy and at least 15 calendar days before the remedy's effective date if the noncompliance does not constitute immediate jeopardy. The State must terminate the provider agreement of an NF in accordance with procedures in parts 431 and 442 of Chapter 4, 42 CFR.**

(b) **Factors to be Considered in Selecting Remedies**

42 CFR
§488.404(b)(1) & (2)

(i) **In determining the seriousness of deficiencies, the State considers the factors specified in 42 CFR 488.404(b)(1) & (2).**

— The State considers additional factors. Attachment 4.35-A describes the State's other factors.

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(c) Application of Remedies

42 CFR
§488.410

- (i) If there is immediate jeopardy to resident health or safety, the State terminates the NF's provider agreement within 23 calendar days from the date of the last survey or immediately imposes temporary management to remove the threat within 23 calendar days.

42 CFR
§488.417(b)
§1919(h)(2)(C)
of the Act.

- (ii) The State imposes the denial of payment (or its approved alternative) with respect to any individual newly admitted to an NF that has not come into substantial compliance within 3 months after the last day of the survey.

42 CFR
§488.414
§1919(h)(2)(D)
of the Act.

- (iii) The State imposes the denial of payment for new admissions remedy as specified in §488.417 (or its approved alternative) and a State monitor as specified at §488.422, when a facility has been found to have provided substandard quality of care on the last three consecutive standard surveys.

42 CFR
§488.408
§1919(h)(2)(A)
of the Act.

- (iv) The State follows the criteria specified at 42 CFR §488.408(c)(2), §488.408(d)(2), and §488.408(e)(2), when it imposes remedies in place of or in addition to termination.

42 CFR
§488.412(a)

- (v) When immediate jeopardy does not exist, the State terminates an NF's provider agreement no later than 6 months from the finding of noncompliance, if the conditions of 42 CFR §488.412(a) are not met.

(d) Available Remedies

42 CFR
§488.406(b)
§1919(h)(2)(A)
of the Act.

- (i) The State has established the remedies defined in 42 CFR §488.406(b).
- ☒ (1) Termination
 - ☒ (2) Temporary Management
 - ☒ (3) Denial of Payment for New Admissions
 - ☒ (4) Civil Money Penalties
 - ☒ (5) Transfer of Residents; Transfer of Residents with Closure of Facility
 - ☒ (6) State Monitoring

Attachment 4.35-B through 4.35-G describes the criteria for applying the above remedies.

The rules cited in Supplement to Attachments 4.35-B through 4.35-G serve as the State's authority to impose the remedies described at item (d) (i) on the same page.

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42 CFR
§488.406(b)
§1919(h)(2)(B)(ii)
of the Act.

- (ii) — The State uses alternatives remedies.
The State has established alternative remedies that the State will impose in place of a remedy specified in 42 CFR 488.406(b).
- (1) Temporary Management
— (2) Denial of Payment for New Admissions
— (3) Civil Money Penalties
— (4) Transfer of Residents; Transfer of Residents with Closure of Facility
— (5) State Monitoring.

Attachments 4.35-B through 4.35-G describe the alternative remedies and the criteria for applying them.

42 CFR
§488.303(b)
§1919(h)(2)(F)
of the Act.

- (e) — State Incentive Programs
- (1) Public Recognition
— (2) Incentive Payments